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SENSITIVE

E.O. 12958: N/A

TAGS: [EAGR](#) [ETRD](#) [SENV](#) [TBIO](#) [SF](#)

SUBJECT: SOUTH AFRICA: BIOSAFETY UPDATE

REFS: A) STATE 259661; B) PRETORIA 5285; C) PRETORIA 5223;

D) PRETORIA 1806; E) 03 PRETORIA 6111; F) 03 PRETORIA 1441

SENSITIVE BUT UNCLASSIFIED, PROTECT ACCORDINGLY

1. (SBU) Summary: In October 2004, the National Department of Agriculture (NDA) published amendments to the current Genetically Modified Organisms (GMO) Act, to bring it in line with the Cartagena Protocol on Biosafety; public comments were requested by November 19, but it is unclear how quickly the NDA will follow up. Environmental laws put into effect in 2004 have the potential to make the GMO approval process slower and more cumbersome. Government officials are particularly concerned with potential requirements for environmental impact assessments, along with the prospective role of the Minister of Environmental Affairs and Tourism and the South Africa National Biodiversity Institute. On the good news front, the Department of Science & Technology continues to support biotech programs, local courts continue to uphold protection of business confidential information in GMO applications and a regional group is pursuing biotech projects as well, with South Africa to host its center of excellence. End summary.

Amendments to GMO Act

2. (SBU) Further to post's April biotech policy update (Ref D), the SAG's National Department of Agriculture (NDA) decided to amend its Genetically Modified Organisms Act (introduced in 1997, promulgated in 1999) directly, rather than make changes to the implementing regulations. In October 2004, the NDA published its draft amendments to bring the Act in line with the Cartagena Protocol for Biosafety (CPB). Public comments were requested by November 19, 2004 and it is not clear how and when the NDA will respond to the comments. Parliament eventually will have to approve the amended law. The amendments appear overall to be reasonable, except for a few concerns noted below (paras 3-4).

3. (SBU) Under the current GMO Act, the Executive Council responsible for making regulatory decisions consists of eight members: one representative from six government departments (Agriculture, Science & Technology, Health, Environmental Affairs & Tourism, Trade & Industry, and Labor), the chair of the Advisory Committee that provides scientific and technical analysis of risk assessment data, and the GMO Registrar, an official from NDA responsible for administering the Act. The draft amendments expand the Council to 10 members, adding representatives from the Department of Water Affairs and Forestry, and the Department of Arts and Culture. The contribution to be made by the latter is not evident to us, and officials from Department of Science & Technology told EmbOffs on December 3 that they shared this concern.

4. (U) The amendments also make conflicting references to the need for an "environmental assessment" and an "environmental impact assessment," and the assessment is not clearly defined. DST officials told EmbOffs they raised this concern and requested clarification from NDA. An APHIS expert who spent 10 weeks in Pretoria as Embassy Science Fellow also noted that added requirements to notify the CPB's Biosafety Clearinghouse in the event of an accident appear to go beyond the provisions of the CPB.

Various stakeholders respond

5. (U) The GMO amendments mention opportunities for public comment, but this did not appear to satisfy anti-GMO activists. Anti-GMO lobby group BioWatch's 19-page submission of highly negative comments can be found online at www.biowatch.org.za/Amendment_Bill_comments_V_Final.doc. BioWatch calls the SAG's approach "narrow, non-consultative"

and the proposed amendments "poorly drafted and wholly inadequate." The group demands that the SAG apply a precautionary approach and urges a new process that allows much greater public participation in determining GMO policy and redrafting the GMO Act. It also urges public Parliamentary hearings and debates on GMO policy and legislation.

16. (U) Local press reported comments on the amendments from the anti-GMO Centre for Biosafety director, Mariam Mayet: "They do not fully implement the Biosafety Protocol, perpetuate the lack of transparency (in the act), will expedite the trade in GMOs, make it easier for the biotechnology industry to conduct field trials and appear to open up a hitherto closed door to human gene therapy." Mayet also expressed concerns about proposed amendments that allow the GMO registrar to "fast-track" permits without the approval of the national Executive Council. The NDA's manager for genetic resource management, Julian Jaftha, clarified to the media that fast-track approvals only applied to the extension of previously-granted approvals.

17. (SBU) Pro-biotech AfricaBio shared its comments with EmbOffs. AfricaBio noted broadly that the CPB pertains only to Living Modified Organisms, and the amendments do not always adhere to the provisions, wording and scope of the Protocol. AfricaBio also does not support the specific addition of two persons with knowledge of ecological matters (and a "non-prejudiced position" on GMOs) to the Advisory Committee that reviews applications and provides technical advice to the Executive Council members. It notes that specific expertise has not been singled out for other members in the Advisory Committee and suggests alternative language that allows greater flexibility in determining composition of the Committee. AfricaBio also questioned the addition of Department of Arts and Culture to the Executive Council.

Environmental official's perspective on biosafety policy

18. (SBU) A seasoned official from Department of Environmental Affairs and Tourism told EST Officer on December 3 that the next six months will be critical for SA's policies on biosafety, as the amended GMO Act and environmental regulations are finalized and new personnel appointments are made. DEAT recently advertised for a new Director of Biosafety to improve its extremely limited capacity. The DEAT official said that this appointment could "go either way" and may be awarded to an individual with strong anti-GMO leanings. Many senior DEAT officials are susceptible to influence by what the official termed "the greens." When EST Officer noted the recent statements of DEAT Director General Chippy Olver in support of the SAG's GMO policies (Ref C), the DEAT official termed these comments as "atypical" for Olver.

19. (SBU) Recently-enacted environmental legislation may have negative impacts on the GMO approval process. The National Biodiversity Act, which was signed into law in June 2004 and effective as of September 1, gives significant powers to the Minister of Environmental Affairs and Tourism on biosafety issues. The law states, "If the Minister has reason to believe that the release of a genetically modified organism into the environment under a permit applied for in terms of the Genetically Modified Organisms Act, 1997, may pose a threat to any indigenous species or the environment, no permit for such release may be issued in terms of that Act unless an environmental assessment has been conducted..." under provisions of other legislation on Environmental Impact Assessments (EIA, see para 10 below). The Act does not define "environmental assessment." In giving special powers to the Minister, the provision does not appear to be consistent with the GMO Act (which gives similar powers to an Executive Council on which DEAT is represented) and could create grounds for appeal of all GMO regulatory decisions, effectively slowing down-or grinding to a complete halt--the GMO approval process.

10. (SBU) Amendments to the National Environmental Management Act intended to strengthen environmental compliance and enforcement have led to the revamping of the Environmental Impact Assessment process. The DEAT official told EST Officer that under new EIA rules being developed, GMO approvals were going to be required to have full-fledged environmental impact assessments. The official intervened personally to convince DEAT colleagues to change from the onerous requirement for an EIA to requiring an "initial assessment" (Note: the IA is more equivalent to the environmental assessment in the U.S.) for GMO approvals.

11. (SBU) Officials at DEAT as well as DST told EmbOffs they had concerns about the role and capacity of the recently-established South African National Biodiversity Institute (Ref B) to provide timely, science-based risk analysis of biodiversity impacts from GMO products. The new

Biodiversity Act directs SANBI to "monitor and report regularly to the Minister on the impacts of any genetically modified organism that has been released into the environment, including the impact on non-target organisms and ecological processes, indigenous biological resources and the biological diversity of species used for agriculture." However, the SAG is not providing resources to enable SANBI to develop the capacity to carry out this mandate.

Positive developments on biosafety, biotech policy

12. (U) The Department of Science & Technology continues to provide strong program support for biotechnology. In August 2004, Minister of Science & Technology Mosibudi Mangena reiterated his Department's commitment to a platform for biotechnology research, development and commercialization (Note: this was incorrectly reported in the media as a "new" initiative; it was first time the new Minister has discussed his department's biotech programs, which have been in place since early 2003, see Refs E, F. End note).

13. (SBU) PlantBio, South Africa's fourth biotechnology innovation center--and the first with a national scope and an exclusive focus on plant biotechnology--was officially launched in October 2004. DST sources tells us that PlantBio has already received many strong project proposals, but current funding levels are limited to R 9 million (USD 1.6 million at USD = R5.7). Three biotech regional innovation centers in Gauteng, Western Cape and KwaZulu Natal provinces are actively engaged in funding research and related projects to bring biotech to the market, working in close cooperation with government-supported biotech incubators that support the efforts of fledgling biotech companies.

14. (SBU) In mid-November, New Partnership for African Development (NEPAD) S&T representatives held a regional workshop of representatives of countries from southern Africa (including from South Africa's DST) to discuss potential projects. Professor Aggrey Ambali, a new NEPAD BioSciences advisor who hails from Malawi and will work with NEPAD Science & Technology Adviser John Mugabe, discussed biotech programs in the Southern African region with country representatives. DST sources told EST Officer that the group decided that South Africa's Council on Scientific and Industrial Research (CSIR) will host a center of excellence in the NEPAD southern sub-region, to screen project proposals and make research awards. The Canadian International Development Agency is providing financial support for establishing a network of excellence in biotechnology and genomics, including these regional centers of excellence. Comment: The development of sub-regional program areas within NEPAD in the biosciences provide a positive and functional alternative to the Southern African Development Community, which has taken a strong precautionary approach to biotech and GMOs, influenced more by politics than science. End comment.

15. (SBU) South African courts have consistently, if slowly, ruled in favor of the NDA and the South African government in cases brought by BioWatch and other anti-GMO groups demanding access to business proprietary information used in GMO approval assessments and appealing government GMO permit decisions.

16. (SBU) Comment: Many of the laws and regulations affecting biosafety and GMO risk management are in flux. Our DEAT colleague rightly noted that SAG decisions in upcoming months will significantly shape South Africa's biosafety policy. FRAZER